

Message Text

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71

ACTION NEA-10

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SUBJECT: ISRAELI LEGAL BRIEF ON JAN. 12 SECURITY COUNCIL MEETING
SURFACES IN PRESS

REF: USUN 6824

BEGIN UNCLASSIFIED

1. JERUSALEM POST DEC. 23 CARRIES FOLLOWING FRONT-PAGE
STORY BY DAVID LANDAU CONVEYING OPINION OF "LEGAL EXPERTS IN
JERUSALEM" THAT U.S. COULD STILL VETO PLO PARTICIPATION
IN JAN. 12 UNSC MEETING.

2. BEGIN TEXT: LEGAL EXPERTS IN JERUSALEM INSIST THAT
THE US COULD--IF IT WISHED-- VETO PLO PARTICIPATION IN
THE SECURITY COUNCIL DEBATE.

3. THERE HAS BEEN NO FORMAL DECISION TO DATE BY THE
COUNCIL TO INVITE THE PLO: THERE HAS ONLY BEEN THE
STATEMENT OF THE THEN-PRESIDENT, RUSSIA'S JACOB MALIK,
AT THE NOVEMBER SESSION ANNOUNCING THAT THE "MAJORITY"
OF MEMBERS "UNDERSTOOD" THAT THE PLO WOULD BE INVITED
TO THE JANUARY DEBATE.

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4. BUT ON JANUARY 1, FIVE OF THE COUNCIL'S 10 NON-PERMANENT MEMBERS WILL BE REPLACED--AND HENCE, LEGALLY AND TECHNICALLY, THAT "MAJORITY" WILL NO LONGER EXIST...

5. ISRAEL LEGAL EXPERTS ARGUE THAT MALIK'S STATEMENT, UNLIKE A FORMAL COUNCIL RESOLUTION, IS NOT BINDING UPON THE COUNCIL IN ITS CHANGED COMPOSITION AFTER JANUARY 1.

6. MOREOVER, AN ACTUAL INVITATION TO THE PLO WOULD REQUIRE A FORMAL COUNCIL DECISION--AND SUCH A DECISION COULD BE VETOED BY THE U.S., THESE LEGAL EXPERTS ARGUE.

7. THE ARABS AND SOVIETS CONTEND THAT SUCH AN INVITATION IS A "PROCEDURAL" MATTER, AND THEREFORE NOT SUBJECT TO THE VETO, WHICH APPLIES ONLY TO "SUBSTANTIVE" MATTERS.

8. BUT ISRAEL LEGAL EXPERTS CITE THE TEXTBOOKS TO THE EFFECT THAT THE QUESTION OF WHETHER A MATTER IS PROCEDURAL OR SUBSTANTIVE IS ITSELF SUBSTANTIVE. THIS WAS AGREED UPON BY THE FIVE PERMANENT MEMBERS BACK IN 1945, WHEN THE UN CAME INTO BEING IN SAN FRANCISCO (SEE A.W. BOWETT: "THE LAW OF INTERNATIONAL INSTITUTIONS," PAGE 27.)

9. THE U.S. COULD THEREFORE INSIST ON A DEBATE ON WHETHER AN INVITATION TO THE PLO WAS PROCEDURAL OR SUBSTANTIVE--AND VETO ANY RESOLUTION THAT SAID IT WAS PROCEDURAL.

10. IN FACT, THERE ARE PRECEDENTS POINTING IN BOTH DIRECTIONS, AND SOMETIMES IN THE PAST THE ROLE OF THE COUNCIL PRESIDENT (WHO ROTATES EACH MONTH) HAS BEEN CRUCIAL. ISRAEL (AND THE U.S.) COULD PRESUMABLY EXPECT LITTLE SUPPORT FROM NEXT MONTH'S PRESIDENT--THE DELEGATE OF TANZANIA.

11. ISRAEL SOURCES ARGUE, TOO, THAT THE U.S. IS PLEDGED TO OPPOSE THE SYRIAN-SOVIET MOVE BY DIRT OF ITS COMMITMENT TO ISRAEL UNDER THE SINAI INTERIM AGREEMENT PACKAGE. ONE PROVISION IN THE U.S.-ISRAEL MEMORANDUM OF AGREEMENT STATED: "THE U.S. WILL OPPOSE, AND VOTE AGAINST IF NECESSARY, ANY INITIATIVE IN THE SECURITY COUNCIL TO LIMITED OFFICIAL USE

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ALTER ADVERSELY THE TERMS OF REFERENCE OF THE GENEVA PEACE CONFERENCE OR TO CHANGE RESOLUTIONS 242 AND 338 IN WAYS WHICH ARE INCOMPATIBLE WITH THEIR ORIGINAL PURPOSE."

12. WASHINGTON HAS ALREADY TOLD JERUSALEM THAT IT WILL VETO ANY ATTEMPT TO CHANGE 242 AND 338, AND THIS WAS REPORTEDLY REITERATED BY AHERTON YESTERDAY.

13. BUT ISRAEL CONTENDS FURTHER THAT THE COMMITMENT
SHOULD BE INTERPRETED TO DEMAND A VIGOROUS AMERICAN
EFFORT TO BLOCK PLO PARTICIPATION AT THE SECURITY COUNCIL
DEBATE. END TEXT. END UNCLASSIFIED.

14. COMMENT: BEGIN LIMITED OFFICIAL USE
JERUSALEM POST IS ONLY PAPER DEC. 23 TO CARRY THIS
OBVIOUSLY INSPIRED STORY, BUT WE WOULD NOT BE SURPRISED
TO FIND IT IN HEBREW PRESS LATER IN WEEK. WE NOTE
THAT ARGUMENT SUPPORTING POSSIBLE USE OF "DOUBLE VETO"
(PRESAGED IN TEL AVIV 7826) IS REBUTTED IN PARA 4 REFTEL.
WE HAVE MADE NO USE THUS FAR OF REFTEL IN ABSENCE
OF INSTRUCTIONS FROM DEPT.
TOON

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